

(2003) 07 AHC CK 0043
In the Allahabad High Court
Case No : C.M.W.P. No. 48309 of 2000

Omkar Nath Kushwaha and Others

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 38

Citation : (2003) 6 AWC 5462

Hon'ble Judges : Umeshwar Pandey, J; A.K. Yog, J

Bench : Division Bench

Advocate : Sekhar Kumar Yadav, for the Appellant; S.N. Srivastava, (S.S.C.), S.C. Srivastava and Subodh Kumar, for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and Umeshwar Pandey, JJ.—Heard learned counsel appearing on both sides and perused the record.

2. Petitioners, namely, Sarvshri Omkar Nath Kushwaha, D.C. Banerjee, Mahabir, Prithwi Pal, Lallan Prasad, Talib Raza, Baram Din, G.R. Singh, S.N. Nishad, Mewa Lal, Ram Gopal, Nankoo Ram, Moti Lal and K.N. Gupta, working as "Markers" and being aggrieved by the disparity in the pay-scale available to them vis-a-vis the pay-scale which was made applicable to "Painters" and "Decorators" trade have approached this Court by means of the present writ petition under Article 226 of the Constitution of India seeking to challenge the judgment and order dated 25.7.2000 (Annexure-1 to the petition) passed by Central Administrative Tribunal rejecting O.A. No. 1275 of 1999.

3. It is not in dispute that three Tradesmen—"Markers", "Painters" and "Decorators" were getting one and the same pay-scale till 1981. After 1981, "Painters" and "Decorators" were treated in the skilled category and given pay-scale of Rs. 260-400, while "Markers" remained in the pay-scale of Rs. 210-290.

4. Later "Markers" were made entitled to pay-scale of Rs. 800-1,150, Painters

and Decorators were placed in pay-scale of Rs. 950-1500.

5. Petitioners, apart from other contentions, place reliance upon the report of Sub-Committee formed at the instance of the staff side members of the J.C.M. of Army Head Quarters, which urged that Markers be treated as skilled trade and should be given skilled grade.

6. The Sub-Committee under the Chairmanship of Brig. S.A. Zamir alongwith other members of the Committee undertook an exercise to find out the details of the nature of job performed by Markers, Painters and Decorators and came to the conclusion that identical duties and job was performed by all the three and all the three placed in one and same pay-scale. Apart from the recommendation of the aforesaid Sub-Committee at departmental level, Fifth Pay Commission specifically considered the above subject of demand of parity in pay-scale and merger of "markers", "painters" and "Decorators" in one Grade.

7. Recommendation made by Fifth Pay Commission has been quoted in the impugned judgment by the Tribunal and the same reads:

"It has been intimated that there is a long standing demand for parity of pay scales and merger of Markers with that of Painters and Decorators in A.O.C. We have considered the issue and find that in terms of essential qualifications for direct recruitment, the exist Markers are at par with semi-skilled Painters and Decorators (Mate). Keeping in view the similarity in job content, we recommend merger of Marker with the semi-skilled Painters and Decorators (Mate) in the pay scale of Rs. 800-1150."

8. The Tribunal, however, we fail to appreciate, dismissed the original application with observation that job evaluation and fitment in a particular pay-scale on the basis of nature of work has to be performed by an Expert Committee as it requires certain amount of expertise.

9. We are at loss to make out the logic on the basis of which the Tribunal has rejected the application by making aforesaid observation. Pay Commission and Departmental Sub-Committee have already considered the issue and made recommendations. In fact, the conclusion drawn by the Tribunal in para 4 of its impugned judgment runs contrary to the contents of judgment contained in para 3 of the said judgment itself.

10. In view of this, the Court is not required to evaluate job, nature of duty performed by Markers vis-a-vis Painters and Decorators. The Court anxious only to ensure that an employer, (covered under Article 12 of the Constitution of India) is treating its employees, who are discharging similar and identical duty, without discrimination on the principle of "Equal pay for equal work".

11. In view of the above, we quash the impugned judgment and order dated 25.7.2000, passed by the Tribunal/Annexure-1 to the petition and hereby issue a writ of mandamus commanding the Respondents to fix "Markers" in the pay-scale which is being made admissible to "Painters" and "Decorators" with effect

from the date of filing of the writ petition and pay their salary accordingly. If the Petitioners have already retired, they will be paid their arrears with 10% simple interest.

12. The petition stands allowed. No order as to costs.